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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/866,088	05/25/2001	Jere F Irwin	IR3-023	5475

21567 7590 12/30/2002

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EXAMINER

CASTELLANO, STEPHEN J

ART UNIT PAPER NUMBER

3727

DATE MAILED: 12/30/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/866,088

Applicant(s)

IRWIN, JERE F

Examiner

Stephen J. Castellano

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 and 17-24 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 17-24 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____. | 6) <input type="checkbox"/> Other: _____ |

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The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, each corner surface subtending an angle greater than an angle subtended by the respective corner as stated in claims 1, 17 and 21 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered. The drawings do not depict any reference to these two angles.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: The statement found in claims 1, 17 and 21 that each corner surface subtending an angle greater than an angle subtended by the respective corner is not understood. It seems to mean that each corner surface underlies an angle greater than an angle underlied by the respective corner. These two angles don't seem to be referred to in the specification or shown in the drawings. The two angles referred to seem to refer to imaginary or reference angles rather than a element that is physically present in applicant's invention. If the angles are meant to represent physically present surfaces, then why hasn't applicant referred to the angles as coinciding with the corner surfaces and other surfaces of the corners rather than stating that their relationship involves subtending or underlying?

Claims 1-10 and 17-24 are objected to because of the following informalities: Claim 1 recites structure pertaining to each corner surface subtending an angle greater than an angle subtended by the respective corner which has not been shown in the drawings. Appropriate

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correction is required. Appropriate correction may include the cancellation of the claim(s) or the removal of the objectionable portion of the claim(s). Do not submit new matter. Claims 17 and 21 are similar.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-10 and 17-24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The statement that each corner surface subtending an angle greater than an angle subtended by the respective corner doesn't seem to have any definitive meaning. The specification has been look toward to see if the specification sheds any light on this limitation, but the specification doesn't even mention this limitation. The meaning seems to be based upon imaginary or reference angles associated with the corner surfaces and the other surfaces of the corners, these reference angles overlies respective surfaces of the corner surfaces and other surfaces of the corners such that the corner surfaces and other surfaces of the corners subtend or underlie these reference angles. The drawings do not show these angles either. Absent appropriate guidance from the specification and drawings, one having ordinary skill could possibly construe any of the infinite number of reference planes or reference lines extending above the corner surfaces and other surfaces of the corners which could be used to meet these limitations.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 7,8, 10 and 17-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Corelli.

Corelli discloses a container constructed of sturdy, high-impact plastic, the container is lined with an insulating liner 19 made of foam molded polystyrene permanently fixed to the container, the container is a thermal plastic expanded foam rectangular tray inherently capable of holding meat, the tray includes a bottom and side walls extending upwardly and outwardly from the bottom, each of the side walls has a lower section with an inclined inside surface and an upper section, at least one upper section has internal inclined corner surfaces extending upward and outward to the lip at the four corners, each corner surface subtending an angle greater than an angle subtended by the respective corner, each inclined corner surface forms an obtuse angle with the bottom wall that is less than a corresponding obtuse angle formed between a corresponding lower wall section and the bottom wall.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3-5, 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Corelli.

Corelli discloses the invention except for the exact angle of inclination of the inclined corner surfaces (although it is known to be greater than 90 degrees as shown by the drawing) and

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the angle of inclination of the lower sections of the side walls (although it is shown to be approximately 120 degrees). It is well known to provide a shallower angle for more access to the top opening in the tray while it is also well known to provide a narrower angle to restrict access. It would have been obvious to modify the angles to be between 94 to 100 degrees for the upper section and the inclined corner surfaces and to be between 110 to 140 degrees for the lower section in order to optimize the access for the upper section and the lower section by design choice.

Claims 2 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Corelli in view of LaFleur.

Corelli discloses the invention except for the inside reinforcing ribs of claim 2 and 9, the arc of greater than 90 degrees of claim 6 and the upper section incline of between 110 to 140 degrees. LaFleur discloses a plastic foam rectangular meat tray with a bottom and side walls, the side walls have an inclined lower section and an inclined upper section that terminates in an outwardly extending lip, the upper section having internal inclined corner surfaces extending upward and outward to the lip, the upper sections of the side walls have inside reinforcing ribs formed therein in which the inclined corner surfaces are indented into the ribs at the corners of the side walls. LaFleur teaches upper sections of the side walls inclined at approximately 120 degrees. It would have been obvious to modify the upper sections of the side walls to have inside reinforcing ribs to provide a container that resists buckling. It would have been obvious to modify the angle of inclination to be between 110 to 140 degrees to modify the access to the container by design choice.

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Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Corelli in view of Ramirez.

Corelli discloses the invention except for the curvature of greater than 90 degrees in the corner. Ramirez teaches a plastic foam rectangular tray for food with a bottom and side walls, the side walls have an inclined lower section and an inclined upper section that terminates in an outwardly extending lip, the upper section having internal inclined corner surfaces extending upward and outward to the lip, the inclined corner surfaces are inclined from a vertical line at angle alpha of 15-40 degrees which makes an angle in the range of 105 degrees ($90 + 15 = 105$) to 130 degrees ($90 + 40 = 130$) with the bottom wall. Ramirez teaches a greater than 90 degree curvature in the corner. It would have been obvious to modify the tray to have greater than 90 degree curvature to provide a corner which is wider so than the contents do not get trapped into the corner which would impede access and impede through cleaning of the interior of the container's corners.

Applicant's arguments with respect to claims 1-10 and 17-24 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period


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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 703-308-1035. The examiner can normally be reached on M-Th 6:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on 703-308-2572. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.


Stephen J. Castellano
Primary Examiner
Art Unit 3727

sjc
December 26, 2002